IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.784 OF 2005
IN
SUM.SUIT NO.3561 OF 2003

Bank of Baroda(Hong Kong) Ltd. & Anr. ..Plaintiffs.

V/s.

Ganger Enterprises & Anr. ..Defendants.

Mr.Birendra Saraf with Raju Gawde i/b K.Ashar & Co. for plaintiff.

Mrs. S.R.Kumbhat i/b K.K.Tated for defendant No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 25, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This is an application for amendment of plaint. Suit is for recovery of amounts due and payable by defendant No.1 under and in respect of a Bill of Exchange in its capacity as Acceptor. It is stated in paragraph No.6 of the plaint that defendant No.1 upon acceptance of the aforementioned Bill of Exchange took delivery of the documents after furnishing to the Union Bank of India the revised draft which was payable on 24th March, 2002. In

paragraph-7, details about bills of exchange is provided. In paragraph-8, it is stated that if the plaintiff caused customary presentment of the Bill of Exchange drawn by defendant No.2 and accepted by defendant No.1 on 2nd August, 2002 at their Navi Mumbai Office and thereafter at their Mumbai Office when payment thereunder was refused by Defendant No.1. In paragraph-11 of the plaint, it is stated that the said bill was drawn on defendant No.1 having its office at Vashi, Navi Mumbai and Chinch Bunder, Mumbai within the jurisdiction of this Hon'ble court. It is then stated that the Bill of Exchange has been presented and dishonoured by the proprietor of Defendant No.1 at their office at Mumbai situated at Chinch Bunder. On this basis, it is asserted that this Hon'ble Court has jurisdiction to entertain, try and dispose of the present suit. The present suit is filed as a Summary suit under order XXXVII Rule 2 of the C.P.Code, 1908. During the pendency of the suit, plaintiffs took out summons for Judgment. However, the same has been disposed of on 8th February, 2005, in view of the stand taken by the parties. Said order read thus :

> "1. Heard the learned counsel for the parties.

> 2. The learned counsel for the plaintiff seeks leave to withdraw this Summons for Judgment with liberty to apply afresh after the amendment of the plaint. The learned counsel for the defendant, reserving the right to oppose the amendment as and when applied has no objection for the withdrawal.
>
> 3. Summons for Judgment disposed of as withdrawn with liberty as above."

Pursuant to the liberty granted by this court, the plaintiffs have filed this chamber summons for amendment. The plaintiffs seek to amend the plaint by inserting following assertions.

In Paragraph-6 - "The said Bill of Exchange was accepted and handed over by Defendant No.1 to the Union Bank of India, Bhat Bazar Branch, Mumbai. The acceptance of the Bill of Exchange was therefore complete at the Bhat Bazar Branch of Union Bank of India at Mumbai."

In Paragraph-9 - "The Plaintiffs were entitled to charge 18% interest as per the provisions of the

Negotiable Instruments Act. However, considering the interest rate that was being charged by the Plaintiffs on similar transactions of discounting bills of exchange, the Plaintiffs have, in the present case, restricted their claim of interest at the rate of 4.75% per annum from the due date of the Bill of Exchange."

In paragraph-11 of the plaint the plaintiffs seek to insert following averments -

Paragraph-11- "....The acceptance of the bill of exchange was complete when the Defendants accepted and handed over the bill of exchange to the Union Bank of India at their Bhat Bazar Branch at Mumbai on behalf of the Plaintiffs".

In addition to the above amendments, minor corrections of clerical nature are sought.

3. This application is however, resisted by the counsel for the defendants. According to her, this application ought to be dismissed as it will change the frame of the suit as filed. It is also contended that from the documents which are appended in the plaint, it is seen that the Bill of Exchange is drawn

at Hongkong by the concerned defendant. Part of the cause of action has arisen outside the jurisdiction of this court. Leave under clause 12 of the Letters Patents was not obtained and because of failure to obtain such leave, this court cannot proceed with the suit. Reliance is placed on the decision of this court reported in **1993 (1) Bom.C.R.501, Noorjahan wd/o Altaf Ahmed V. Sadrunnisa wd/o Haji Fatehulla Khan and AIR 1987 Bombay 227, Dena Bank Ltd. V/s. Ironside Ltd.** It is contended that even on fair reading of the assertion in the plaint, it is obvious that Bill of Exchange has been accepted at Navi Mumbai office by defendant No.1. If it is so, this court has no jurisdiction at all to proceed in the suit. On the above submissions, the learned counsel for the defendant submits that the plaintiff cannot be permitted to amend the plaint in the suit which ought to be dismissed for want of jurisdiction.

4. Having considered rival submissions, in my opinion, proposed amendments sought by the present application are nothing but correction of clerical errors and explanatory or clerificatory in nature. In fact, the defendant No.1 has accepted subject Bill of Exchange at Mumbai, has been clearly stated in paragraph-11 of the plaint. Indeed, in paragraph-8

of the plaint it is mentioned that the plaintiffs caused customary presentment of the Bill of Exchange drawn by defendant No.2 and accepted by defendant No.1 on 2nd August, 2002 at their Navi Mumbai Office. But at the same time, the averments in paragraph 9 proceed to observe that thereafter, the defendant No.1 accepted the Bill of Exchange at their Mumbai office when payment thereunder was refused by defendant No.1. There is substance in the submission canvassed on behalf of the plaintiff that plaint will have to be read as a whole. In fact the jurisdiction of this court has been spelt out in the plaint as filed. The argument of the defendants that part of cause of action has arisen outside the jurisdiction of this court cannot be considered while considering prayer for amendment of the plaint which, as mentioned earlier, is only in the nature of correction of clerical errors and explanatory one. The counsel for the plaintiffs also rightly submitted that intention of the plaintiffs in the assertion made in paragraph 8 of the plaint is twofold, namely, "presentment" Bill of Exchange drawn by defendant No.2 and accepted by defendant No.1 on 2nd August, 2002 was at their Mumbai office. In other words, presentment of Bill of Exchange was done in Navi Mumbai Office and thereafter, the same was accepted

at Mumbai office when payment thereunder was refused by defendant No.1.

5. Viewed in this perspective, in my opinion, proposed amendment will have to be granted. The decisions pressed into service on behalf of the defendant are of no avail for deciding the point in issue. If the plaintiffs' case as stated in the plaint which has been clarified and explained in the proposed amendment is accepted, then it is open to the defendants to contend that as part of cause of action has arisen outside the jurisdiction of this court, leave under clause 12 was necessary. That aspect will have to be examined at the appropriate stage and will be taken to its logical end. In my opinion, proposed amendment will have to be granted being one intended to correct the clerical errors and also being explanatory or clarificatory in nature. The proposed amendment in paragraph-9 is obviously on account of clerical error for mentioning rate of interest at 4.75% instead of 4.7%, which computation has been done in Statement of claim appended to the plaint, circumstances in which rate of interest is restricted to 4.75% per annum has been spelt out under proposed amendment.

6. Taking over all view of the matter, chamber summons is made absolute in terms of prayer clause (a). Ordered accordingly. Amendment to be carried out within three weeks from the date of issuance of copy of this order.